

Application Serial No.: 09/977,426
Reply to Office Action dated December 3, 2004, and
Advisory Action dated March 11, 2005

REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 10-24 are presently active in this case. Claims 1-9 have been canceled without prejudice or disclaimer. Additionally, Claims 10-24 have been added by way of the present Amendment. No new matter has been entered as clear support for the new claims is present in the originally filed drawings and written description.

In the final Official Action, Claims 1, 3, 5, 6, 8, and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nishishita (U.S. Patent No. 6,397,938) in view of Sugawara et al. (JP3-31694). As noted above, Claims 1, 3, 5, 6, 8, and 9 have been canceled, thereby rendering the above rejection moot. However, with regard to the combination of the teachings of the Nishishita reference and the teachings of the Sugawara et al. reference, the Applicants want to traverse the assertions made in the Advisory Action.

As discussed in the earlier Request for Reconsideration, the Applicants submit that a *prima facie* case of obviousness as defined in MPEP 2143 has not been established in the present case because no motivation existed to combine the cited references in the manner suggested in the final Official Action.

The Applicants respectfully submit that one of skill in the art would not have been motivated to combine the teachings of the Sugawara et al. reference with the Nishishita reference, since the Nishishita reference expressly teaches away from such a combination.

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The Nishishita reference describes a heat exchanger (1) formed by laminating a plurality of tube elements (9) and a plurality of fins (5). The tube elements (9) are each provided with a pair of separate and discrete tank portions (2, 3) at one end, and a pair of separate and discrete tank portions (4, 5) at the other end. The Nishishita reference expressly teaches that all of the tube elements (9) are identical to one another. The Nishishita reference states that “since the tube elements to be laminated can be all is formed identically to one another, productivity is improved. Since there is no risk of erroneous assembly which may occur when assembling different parts, a further improvement in productivity is achieved.” (Column 5, lines 32-36.) Thus, the Nishishita reference clearly teaches that all of the tube elements (9) are to be formed identically to one another in order to improve manufacturing productivity, and in order to improve assembling productivity. Accordingly, one of ordinary skill in the art would not have been motivated to combine the Nishishita reference with the Sugawara et al. reference’s teachings, since this would require the production and assembly of tube elements having different shapes (e.g., different flow hole sizes) along the length of the heat exchanger, which would be directly contrary to the teachings of the Nishishita reference.

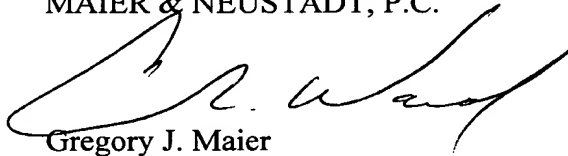
As noted in MPEP 2141.02, the prior art must be considered in its entirety, **including disclosures that teach away from the claims**. (See also, MPEP2145 X.D.2, indicating that it is improper to combine references where the references teach away from their combination.) The Nishishita reference clearly teaches away from the proposed combination.

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Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read 'G. J. Maier', written over the printed name.

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